

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 404

Citations Affected: IC 16-18; IC 16-19; IC 16-22; IC 16-42; noncode.

Synopsis: Food handling and food establishments. Requires that, after December 31, 2004, every food establishment must have at least one certified food handler. Exempts certain food handling activities and certain institutions from the requirement to have a certified food handler. Requires a certified food handler to hold a certificate recognized by the Conference for Food Protection or an equivalent nationally recognized certification program as determined by the state department of health. Preempts local health departments from: (1) regulating food handlers; (2) imposing any sanitary standard or locally prescribed monetary penalties for the violation of any state law or rule concerning food handling or food establishments; and (3) establishing any requirements or standards for the installation of food handling machinery in a food establishment. Authorizes a corporation or local health department to file a petition with the state department requesting changes to the rules concerning food handling machinery, sanitary standards for food handling or food establishments, or civil penalties authorized under IC 16-42-5-28, and requires the state department to hold a public hearing concerning the petition. Authorizes the state department, for good cause, to grant a variance from one or more of the state rules concerning food handling machinery or sanitary standards for the operation of food establishments. Requires the state department to establish civil penalties for violations of food establishment rules. Provides local enforcement authority for the schedule of civil penalties established by the state department and requires that the amounts collected be deposited in the corporation's or local health department's general fund. Provides that either the state department or a local health department, but not both, may collect a civil penalty from a food establishment for a violation of a state law or rule. Permits a corporation or local health department that, before January 1, 2001, adopted: (1) sanitary standards concerning food handling or food establishments that are different from the state rules; or (2) monetary penalties for the violation of any state or local law or rule concerning food handling or food establishments; to continue to enforce those locally prescribed sanitary standards or monetary penalties until: (a) the state department adopts permanent rules in those areas; or (b) July 1, 2003. (This conference committee report: (1) authorizes a corporation or local health department to file a petition with the state department requesting changes to the state department's rules concerning food handling machinery, sanitary standards for food handling or food establishments, or civil penalties authorized under

IC 16-42-5-28, and requires the state department to hold a public hearing concerning the petition; (2) authorizes the state department, for good cause, to grant a variance from one or more of the state rules concerning food handling machinery or sanitary standards for the operation of food establishments; (3) adds local enforcement authority for the schedule of civil penalties established by the state department under IC 16-42-5-28 and requires that the amounts collected be deposited in the corporation's or local health department's general fund; (4) provides that either the state department or a local health department, but not both, may collect a civil penalty from a food establishment for a violation of a state law or rule; and (5) permits a corporation or local health department that, before January 1, 2001, adopted: (a) sanitary standards concerning food handling or food establishments that differ from the state department's rules, or (b) monetary penalties for the violation of any state or local law or rule concerning food handling or food establishments, to continue to enforce those locally prescribed sanitary standards or monetary penalties until the state department adopts permanent rules in those areas, or July 1, 2003.)

Effective: Upon passage.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 404 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Page 2, between lines 29 and 30, begin a new paragraph and insert:
- 2 "SECTION 8. IC 16-19-3-4.3 IS ADDED TO THE INDIANA CODE
- 3 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 4 UPON PASSAGE]: **Sec. 4.3. Upon a showing of good cause, the**
- 5 **executive board may grant a variance from one (1) or more of the**
- 6 **state rules concerning:**
- 7 **(1) food handling machinery; or**
- 8 **(2) sanitary standards for the operation of food**
- 9 **establishments."**
- 10 Page 3, between lines 11 and 12, begin a new paragraph and insert:
- 11 "SECTION 10. IC 16-42-5-0.9 IS ADDED TO THE INDIANA
- 12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 13 [EFFECTIVE UPON PASSAGE]: **Sec. 0.9. (a) A corporation or local**
- 14 **health department may petition the state department requesting**
- 15 **one (1) or more modifications or changes in the state department's**
- 16 **rules concerning:**
- 17 **(1) food handling machinery;**
- 18 **(2) sanitary standards for food handling or food**
- 19 **establishments; or**
- 20 **(3) civil penalties authorized under IC 16-42-5-28.**
- 21 **(b) Following the receipt of a petition described in subsection (a),**
- 22 **the state department shall hold a public hearing concerning the**

corporation or local health department's requested modifications or changes and shall determine in writing whether to adopt rules under IC 4-22-2 to modify or change the state department's rules."

Page 3, between lines 24 and 25, begin a new paragraph and insert:
 "SECTION 12. IC 16-42-5-5.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.2. The state department may grant a variance from one (1) or more of the state rules concerning:**

(1) food handling machinery; or
 (2) sanitary standards for the operation of food establishments; in accordance with IC 16-19-3-4.3."

Page 3, line 33, delete "state laws and" and insert "the state department's".

Page 3, line 38, delete "[EFFECTIVE JULY 1, 2001]" and insert "[EFFECTIVE UPON PASSAGE]".

Page 4, between lines 4 and 5, begin a new paragraph and insert:
 "(c) The civil penalties collected under this section shall be deposited in the state general fund."

Page 4, line 5, delete "(c)" and insert "(d)".

Page 4, line 14, delete "(d)" and insert "(e)".

Page 4, line 19, delete "(e)" and insert "(f)".

Page 4, between lines 25 and 26, begin a new paragraph and insert:
 "(g) A corporation or a local health department:

(1) may bring an administrative action to enforce this chapter, rules adopted to implement this chapter, or the schedule of civil penalties established by the state department under this section;

(2) may use tickets or citations to enforce this chapter, rules adopted under this chapter, or the schedule of civil penalties established by the state department under this section; and

(3) shall deposit in the general fund of the corporation or the local health department the civil penalties collected under this section.

(h) For each violation of the state law or rules concerning food handling or food establishments, the state or either:

(1) a corporation; or

(2) a local health department;

may bring an enforcement action against a food establishment."

Page 6, line 23, after "PASSAGE]" insert "(a)".

Page 6, between lines 33 and 34, begin a new paragraph and insert:
 "(b) A corporation or local health department that, before January 1, 2001, adopted monetary penalties for the violation of any state or local law or rule concerning food handling or food establishments may continue to enforce those locally prescribed monetary penalties (including the issuance of tickets or citations authorized by local law) and deposit the amounts collected as prescribed by local law until the later of:

(1) the date that permanent rules are adopted establishing the schedule of civil penalties required under IC 16-42-5-28, as added by this act; or

1 **(2) July 1, 2003.**
2 SECTION 17. [EFFECTIVE UPON PASSAGE] **A corporation or**
3 **local health department that, before January 1, 2001, adopted**
4 **sanitary standards for food handling or food establishments that**
5 **are different from the state rules concerning sanitary standards for**
6 **food handling or food establishments may continue to enforce those**
7 **locally prescribed sanitary standards until the later of:**
8 **(1) the date that the state department adopts rules to modify or**
9 **replace the state department's rules that were in effect on**
10 **January 1, 2001, concerning sanitary standards for food**
11 **handling or food establishments; or**
12 **(2) July 1, 2003."**
13 Renumber all SECTIONS consecutively.
 (Reference is to ESB 404 as reprinted April 12, 2001.)

Conference Committee Report
on
Engrossed Senate Bill 404

Signed by:

Senator Miller
Chairperson

Representative Brown C

Senator Rogers

Representative Goeglein

Senate Conferees

House Conferees